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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Assignee's Docket No.: 9227.00)
Group Art Unit: 3696)
Serial No.: 09/848,003)
Examiner: Ella Colbert)
Filing Date: May 3, 2001)
Title: Self-Service Terminal)

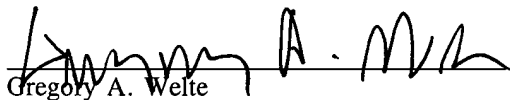
APPEAL BRIEF

A Summary of Argument Begins on Page 4

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CERTIFICATE OF MAILING

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Gregory A. Welte

1. REAL PARTY IN INTEREST

NCR Corporation.

2. RELATED APPEALS AND INTERFERENCES

None.

3. STATUS OF CLAIMS

Claims 44 and 46 - 49 are pending, rejected, and appealed.

Claims 1 - 43 and 45 have been cancelled.

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4. STATUS OF AMENDMENTS

No Amendment-After-Final has been submitted.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Simple Summary

A person obtains pre-approval for an ATM transaction, by obtaining an "authorization message." Then the person submits the "message" to an ATM. If the ATM finds the "message" valid, the ATM executes a transaction, but **without contacting a remote computer to obtain authorization.**

Detailed Summary

Ordinarily, when a customer withdraws cash from an ATM, Automated Teller Machine, the ATM contacts a remote computer (an "authorization center": Specification, page 3, lines 24 - 26; page 8, lines 2 - 10) over a private, secure network, to perform such tasks as determining whether

- 1) the customer has a sufficient balance to cover the withdrawal and
- 2) the customer is authorized to make the withdrawal.

However, such networks are expensive. (Specification, page 1, lines 17 - 19.)

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In one form of the invention, an ATM has no such network connection. (Specification, page 3, line 5 et seq.) Then how does the ATM then make the determinations described above ?

A two-step approach is taken. First, a portable device carried by the customer contacts the authorization center and obtains an "authorization message," as by making a cell phone call.

Next, the portable device then relays the "authorization message" to the ATM. (Specification, page 5, lines 1 - 15.)

The ATM examines the "message." If it is valid, the ATM then proceeds with the transaction, without contacting the authorization center. (Specification, page 10, line 22 et seq.)

Such an ATM is inexpensive, because equipment needed to contact the authorization center has been eliminated. (Specification, page 3, lines 10 - 12.)

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The rejection of claims 44, and 46 - 49 as obvious under 35 USC § 103, based on East and Yamamoto.

The rejection of claims 44 and 47 under 35 USC § 112.

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7. ARGUMENT

SUMMARY OF ARGUMENT

Point 1

Under the invention, a person submits an "authorization message" to an ATM. If the ATM finds the "message" valid, the ATM executes a transaction.

The Final Action treats an ordinary PIN (Personal Identification Number) in East as the "authorization message." However, East's ATM does not execute a transaction in response to a PIN. Instead, the PIN merely identifies the customer. Then, after identification, the customer can **attempt** to proceed with a transaction, by taking other steps.

The PIN in East does not correspond to the claimed "authorization message." The PIN does not cause an ATM to execute a transaction.

The claimed "authorization message" is missing from the references.

Point 2

As explained above, under the invention, if the "authorization message" is valid, an ATM executes a transaction **without obtaining additional authorization**. (See claim 44(c).)

East is cited as showing execution of the transaction without obtaining additional authorization. However, East does not show

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this.

East **explicitly states** that he shows an **ordinary** ATM. It is well known that ordinary ATMs require authorization for transactions, contrary to claim 44(c).

Further, it is well known that ordinary ATMs do not rely on pre-approval through "authorization messages" as authorization for transactions.

Point 3

East is cited in support of a negative limitation, namely, executing the transaction **without** additional authorization.

MPEP § 2173.05(i) states:

Negative Limitations

. . . .

Any negative limitation or exclusionary proviso must have basis in the original disclosure.

. . . .

The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement.

Note that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a prima facie case for lack of descriptive support.

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Therefore, East lacks 112 - support for the recitation for which he is cited.

Interim Conclusion

The claim recitation of executing a transaction without additional authorization is not found in East.

The claimed "authorization message" is not found in East's PIN.

Point 4

As stated above, claim 44(b) states that the customer obtains an "authorization message" "from an authorization center of a financial institution **before** making the requested ATM transaction." Further, the "authorization message" was obtained "**in connection with** the requested ATM transaction."

Clearly, a customer obtains pre-approval for a **specific** transaction.

The Final Action finds this "authorization message" in the PIN of a customer in East.

However, the PIN of East was not obtained "in connection with the requested ATM transaction." A PIN is a generalized form of identification, used for **multiple** transactions.

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Point 5

The Final Action is double-counting the PIN of East. It counts the PIN as the claimed (1) "request" for an ATM transaction and (2) "authorization message." Double-counting is not allowed. **Every** claim element must be shown in the references. This will be explained.

Under claim 44, an ATM transaction is "requested." But **BEFORE** the "request," an "authorization message" is obtained.

Thus, two elements are present: (1) the "request" for a transaction and (2) the "authorization message."

The PIN in East cannot qualify as the claimed "authorization message." A primary reason is that, in East, submission of the PIN to the ATM is **part of a request** for an ATM transaction.

The PIN-submission/request of East **cannot also** qualify as the claimed "authorization message."

The PIN-submission of East is part of a request for a transaction. The PIN cannot also show the claimed "authorization message."

Point 6

The Final Action cites Yamamoto as showing the claimed "authorization message." However, the passage cited in Yamamoto (column 8, lines 12 - 23) shows no "authorization message."

The passage cited describes "home banking," in which a person

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transfers funds, while at home, using a personal computer.

The claimed "authorization message" is not present.

Thus, even if the references are combined, the claims are not attained.

Point 7A

The Final Action's reasoning is defective, thereby precluding a rejection under section 103.

On the one hand, the Final Action (page 3, eighth line from bottom) asserts that East "examines" the claimed "authorization message." At this point, the "authorization message" is asserted to be East's PIN.

On the other hand, the Final Action (page 4, top) asserts that Yamamoto shows the creation of the "authorization message," and its transmission to the ATM. (However, as explained above, Yamamoto's "home banking" is cited for this. No "authorization message" is found in that "home banking.")

Appellant submits that this rejection makes no sense. Somehow, a non-existent "authorization message" in Yamamoto is transmitted to East's ATM for "examination." But the Final Action has already stated that the claimed "examination" is done on East's PIN.

If the (non-existent) "message" of Yamamoto is substituted for East's PIN, then nothing is present for East's ATM to examine.

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Point 7B

Point 7A can be viewed from another perspective.

The Final Action first asserts (page 3, beginning at eighth line from bottom) that East's examination of a PIN shows the claimed examination of the "authorization message." (That is not so, as explained herein.)

Then the Final Action asserts (page 4, top) that Yamamoto shows transfer of the "authorization message" to the ATM, and the claimed examination of that message. (That is also not so, as explained later: no ATM is found in Yamamoto. Also, as explained above, no "authorization message" is found in Yamamoto.)

However, if the supposed "message" of Yamamoto is substituted for East's PIN, then the previously cited examination in East disappears, because the subject of the examination (East's PIN) now disappears.

Consequently, the claim element supposedly shown by this examination in East also disappears.

Point 7C

Another perspective is possible. Something in Yamamoto, which has not been identified, is substituted for East's PIN, and that thing is supposedly examined by East.

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That renders East inoperative. If East does not examine the PIN, then East cannot identify his customer.

Further, no purpose has been stated for making the substitution of the (non-identified) element from Yamamoto to East.

These contradictory assertions cannot support a 103 - rejection.

Point 8

In Appellant's previous Amendment (mailed on or about November 7, 2008), he made the following request on page 12:

However, the undersigned attorney has examined Yamamoto, and cannot find any reference to an ATM, nor the "message," nor the "authorization center."

Therefore, Applicant requests, under 37 CFR §§ 1.104(c)(2) and 35 U.S.C. § 132, that the PTO specifically identify these three elements in Yamamoto:

1. the claimed "authorization message,"
2. the claimed ATM, and
3. the claimed "authorization center."

To date, no identification has been received by the undersigned attorney.

Under the Graham v. Deere rules, all claim elements must be identified in the references. That has not been done.

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Point 9

These Points apply to all claims.

Not all points of this Summary are elaborated below. Some are considered self-explanatory.

END SUMMARY

ARGUMENT IN FULL

**RESPONSE TO THE REJECTION OF CLAIMS 44, AND 46 - 49
AS OBVIOUS UNDER 35 USC § 103, BASED ON EAST AND YAMAMOTO.**

CLAIM 44

Point 1

**Even if References are Combined,
Invention is not Attained
Part 1**

East shows an ordinary ATM, which he also calls an "EBM,"
Electronic Banking Machine. He states:

Any reference hereinafter to an EBM **must be
interpreted** to mean an EBM of the above
general type.

(Column 1, lines 38, 39.)

Thus, the EBM / ATM of East is of the ordinary type, and
obtains authorization for transactions from a remote computer of
the bank owning the ATM. Applicant's Specification, page 1, line
17 et seq., describes the networks used for this authorization.

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East is contrary to the claim recitation of executing the transaction **without** further authorization.

In support of this interpretation of the operation of East's ordinary ATMs, Appellant points to some of the references which were cited in this application:

-- US patent 6,305,603 (Grunbrook) states that, when a person uses an ATM card to make a purchase, a financial institution is contacted at the time of purchase, to obtain authorization. (Column 1, line 15 and column 4, lines 38 - 55.)

-- WO 90/07756 (PCT/US89/05568) (Keryhuel), page 18, lines 13 - 21 states that an ATM contacts "remote master banking computers" to validate a transaction.

-- US patent 4,634,845 (Hale), column 13, line 12 et seq., states that, when a person makes a payment using a card, a terminal contacts a financial institution and debits the person's account immediately. (Column 13, lines 25 - 27.) Hale gives another example of contacting a "host system" for verification at column 14, lines 38 - 45.

-- EP 0 933 733 A2 (Kawan), paragraph 25 (column 8, lines 17 - 21), refers to communication between an ATM and "on-line system of the financial institution."

-- WO 82/03484 (PCT/US81/00450) (Benton), page 7, line

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22 et seq. refers to obtaining "verification" from the
"authorizing institution."

Appellant repeats that all appealed claims herein recite that
additional authorization at the time of the transaction **is not
present**. (See claim 44(d) and 47(d), for example.)

Therefore, the claimed **absence** of "additional . . .
authorization," as in claims 44(d) and 47(d) is not found in the
references, even if combined.

MPEP § 2143.03 states:

To establish prima facie obviousness . . . **all
the claim limitations** must be taught or
suggested by the prior art.

Point 2

Even if References are Combined, Invention is not Attained Part 2

The Final Office Action, page 3, bottom, states that East
shows "executing the requested ATM transaction without obtaining
any additional authorization message from an authorization center
. . . ." The Office Action cites East's column 5, lines 16 - 31, in
support.

Appellant points out two errors in this statement of the Final
Office Action, after briefly describing East.

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East Reference

East shows a system in which a user of an ATM utilizes a personal, portable keypad to enter his PIN, as opposed to using the keypad present on the ATM. This prevents spies from stealing the PIN. The Office Action treats this PIN-entry as the claimed "authorization message."

Error 1

The cited passage in East merely states that, after the PIN is entered, the requested ATM transaction is "permitted" to continue. (Column 5, line 25.) That is, East's PIN-entry merely identifies the customer. After the customer successfully identifies himself, he can then attempt to continue with the transaction.

That does not show "**executing** the requested ATM transaction without obtaining any additional transaction authorization message" as in claim 44. At best, that shows **permitting** the **attempted** execution to **proceed**.

Common sense requires this conclusion.

From another perspective, the PTO is interpreting East as stating that his ATM dispenses cash without checking the customer's balance. That is contrary to common sense.

Appellant submits that, for the PTO's interpretation to prevail, the PTO must provide evidence indicating how the ATM in

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East checks the customer's balance. If that is not done, then the PTO's interpretation of East is not justified.

Error 2

The second error is that, as explained above, East **explicitly states** that he shows an "ordinary" ATM.

An ordinary ATM contacts a central computer to check the customer's account balance, during the ATM transaction. That generates the "additional authorization message" which claim 44 states to be **absent**.

Conclusion as to Point 2

The cited passage of East merely states that the PIN-entry "permits" the ATM transaction to proceed. East's ATM will then obtain authorization, which is contrary to the claim.

The claimed lack of additional authorization is not found in East.

Point 3

Even if References are Combined, Invention is not Attained Part 3

The Office Action, page 3, beginning at eighth line from bottom, asserts that East shows

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. . . examining the transaction authorization message which has been received from the portable device carried by the ATM customer
. . .

Appellant points out that the only item present for East to examine is the PIN of the customer.

However, the PIN in East does not correspond to the claimed "message."

The "message" of claim 44(b) is defined thusly:

b) . . . a transaction authorization **message** . . . which the ATM customer has obtained

from an authorization center of a financial institution

before making the requested ATM transaction at the ATM

and in connection with the requested ATM transaction.

That is, the claimed "message" has **three** attributes.

- 1) It was obtained from "an authorization center of a financial institution."
- 2) It was obtained (from the authorization center by the portable device) "**before** making the requested ATM transaction."
- 3) It was obtained "in connection with the requested ATM transaction" (which occurs

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later).

The PIN in East does not show all these attributes. For example, the PIN was plainly not obtained "in connection with the requested ATM transaction." Instead, the PIN was provided to serve as identification of a customer in numerous future transactions.

As another example, the claim states that the "authorization message" was obtained from an "authorization center." In the claim, the "authorization message," by itself, allows a transaction to be executed. Thus, the "authorization center," which issues the "authorization message," has authority to authorize transactions. The PTO has not shown that the PIN of East was issued by any comparable agency. Nor that East's PIN authorizes the claimed transaction.

Point 4

Even if References are Combined, Invention is not Attained Part 4

Claim 44(c) recites examining the "authorization message" to determine whether it is valid. However, the claimed "authorization message" was obtained from an "authorization center." As explained above, the "authorization center" has authority to authorize transactions, and the "message" acts as authorization.

The PTO has not shown that such an "authorization center" has issued the PIN of East. In fact, the contrary may be assumed. The

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issuance of PINs is purely an administrative matter, and can be handled by hired functionaries.

Nor does the claimed "authorization message" correspond to other data which East's customer may enter, which is listed in his column 4, lines 10 - 39. That data is not obtained from an "authorization center" either.

Interim Conclusions

The claimed "authorization message" is not found in East. The claimed "authorization message"

- was obtained by the customer **before** the ATM transaction,

- was obtained from an "authorization center," and

- relates to the specific ATM transaction.

The PIN of East shows none of that.

Further, the claim states that no other authorization is obtained. That is directly contrary to East, who explicitly states that he shows an ordinary ATM. That ATM contacts a remote computer to check the customer's balances. That is additional authorization.

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Point 5
East Reference is Being Modified, Which is not Allowed

As explained above, East obtains the additional authorization, which the claims state is absent. If this additional authorization is removed from East, then the basic operating principle of East is being modified. East cannot determine the balance of the customer, and thus cannot decide whether to dispense cash.

MPEP § 2143.01 prohibits this:

THE PROPOSED MODIFICATION CANNOT RENDER THE
PRIOR ART UNSATISFACTORY FOR ITS INTENDED
PURPOSE.

THE PROPOSED MODIFICATION CANNOT CHANGE THE
PRINCIPLE OF OPERATION OF A REFERENCE.

Point 6

Rejection is Erroneous: No ATM is Present in Yamamoto

The Final Office Action, page 4, first paragraph, and other locations, asserts that Yamamoto shows an ATM. That is not correct.

Yamamoto shows a portable computer which uses a wireless network. His Figure 10B may contain the phrase "MOBILE BANKING." However, that merely refers to so-called "home banking," in which a person can transfer funds using a PC.

That "MOBILE BANKING" does not involve an ATM.

The Office Action cites column 8, lines 12 - 23, in Yamamoto

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as showing the claimed authorization "message." However, that passage merely describes his Figure 10B, which Applicant described two paragraphs above.

The claimed "authorization message" is not found in Yamamoto.

THEREFORE, claim 44 states that

-- The user obtains an "authorization message" from "an authorization center of a financial institution."

-- This "authorization message" is obtained "before making the requested ATM transaction at the ATM."

-- No other authorizations are used in executing the transaction.

The references, even if combined, fail to show that.

Point 7

The Final Office Action, page 4, top, admits that East fails to show an "authorization message" which was obtained (1) from an "authorization center" (2) prior to the transaction.

Yamamoto, column 8, lines 12 - 23, is cited to cure this deficiency.

However, as explained above, no "authorization message" as claimed is found at that location in Yamamoto. Thus, even if the references are combined, claim 44 is not attained.

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Further, as the Summary of Argument points out, this reliance on Yamamoto is self-defeating as to the overall rejection.

-- East's examination of a PIN is cited to show the claimed examination of an "authorization message."

-- But the Final Action admits that East fails to show receiving an "authorization message" from a portable device. This contradicts the Action's assertion that the claimed "examination" is done. The claimed subject matter ("authorization message") is not present to examine.

-- The Final Action then asserts that the "authorization message" of Yamamoto should be substituted into East. But, as explained above, no such "message" is found in Yamamoto. Thus, the combination of references is inoperative.

Point 8

This is a continuation of Point 7.

The Office Action, page 4, first paragraph, asserts that Yamamoto shows

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receiving from the portable device [carried] by the **ATM customer** a transaction authorization message which is associated with the requested **ATM** and which the **ATM** customer has obtained from an authorization center of a financial institution [before the transaction].

(Emphasis supplied.)

However, the undersigned attorney has examined Yamamoto, and cannot find any reference to an ATM, nor the "message," nor the "authorization center."

In his previous Amendment (mailed on or about November 7, 2008) Appellant requested, under 37 CFR §§ 1.104(c)(2) and 35 U.S.C. § 132, that the PTO specifically identify these three elements in Yamamoto:

1. the claimed "authorization message,"
2. the claimed ATM, and
3. the claimed "authorization center."

To date, no identification has been received.

Point 9

No Expectation of Success

In the present context, Yamamoto shows nothing more than a personal computer, PC, which connects to the Internet in a wireless manner.

It is utterly unclear how such a PC provides the claimed

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"authorization message," obtained from an "authorization center," before the ATM transaction, as the Office Action asserts in the passage cited in Point 8, above.

It is also unclear (1) how this "message" would be given to East's ATM and (2) what East's ATM would do with it.

Therefore, no expectation of success in combining the references has been shown.

MPEP § 706.02(j) states:

Contents of a 35 U.S.C. 103 Rejection

. . .

To establish a prima facie case of obviousness, three basic criteria must be met.

. . .

Second, there must be a reasonable expectation of success.

. . .

The . . . reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.

Point 10

No Valid Teaching Given for Combining the References

The rationale for combining the references is that the combination provides East with a mobile communication system which can use the Internet for banking services. (Final Action, page 4, first paragraph.)

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However, this rationale, as a matter of logic, does not lead to a combination of the references. If you want a mobile device to use the Internet for banking services, then simply follow Yamamoto's teachings **alone**. There is no need to add East.

Further, East is contrary to the concept of mobile banking. East shows a **stationary** ATM. It is not mobile. And no mobile ATM has been shown in the prior art.

Further still, no explanation has been given of how East contributes to the mobile banking achieved over the Internet by Yamamoto. What components of East assist in achieving this goal ?

No valid teaching has been provided.

Remaining Claims

The discussion above applies to the remaining claims.

RESPONSE TO REJECTION OF CLAIMS 44 AND 47 UNDER 35 USC § 112.

The Final Action, page 2, rejected claims 44 and 47 on the grounds that these claims are ambiguous, because subject to two interpretations. The phrase in question is the following:

[Claim 47(b)] . . . and **which** the ATM customer has obtained from an authorization center of a financial institution before making the requested ATM transaction at the ATM and in connection with the requested ATM transaction.

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"Which" (highlighted above) refers to the "authorization message." Under the claim language, the "authorization message" was "obtained"

-- before making the requested ATM
transaction
and
-- in connection with the requested ATM
transaction.

Thus, "in connection with the requested ATM transaction" refers to how the "authorization message" was obtained. The phrase "in connection . . ." modifies "obtained."


The Final Action's alternate interpretation (page 2), namely, that the phrase "in connection . . ." means that "the requested ATM transaction is part of the connection to the ATM" is not supported by the claim language. Nor is it a reasonable interpretation. The interpretation states that a "transaction" is "part of the connection to the ATM," which is not possible.

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CONCLUSION

Appellant requests that the Board reverse all rejections, and pass all claims to issue.

Respectfully submitted,


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ATTACHMENTS: -- CLAIMS APPENDIX,
 -- STATEMENT THAT NO EVIDENCE APPENDIX IS ATTACHED,
 and
 -- STATEMENT THAT NO RELATED PROCEEDINGS APPENDIX
 IS ATTACHED

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8. CLAIMS APPENDIX

44. A method of operating an automated teller machine (ATM),
the method comprising:

- a) receiving from a portable device carried by an ATM customer a request to conduct an ATM transaction at the ATM;
- b) receiving from the portable device carried by the ATM customer a transaction authorization message which is associated with the requested ATM transaction and which the ATM customer has obtained from an authorization center of a financial institution before making the requested ATM transaction at the ATM and in connection with the requested ATM transaction;
- c) examining the transaction authorization message which has been received from the portable device carried by the ATM customer to determine if the transaction authorization message is valid; and
- d) executing the requested ATM transaction without obtaining any additional transaction authorization message from an authorization center of a financial institution when the transaction authorization message received from the portable device carried by the ATM customer is determined to be valid.

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46. A method according to claim 49, wherein examining the transaction authorization message includes:

comparing a unique transaction program identifier contained in the transaction authorization message with the unique transaction program identifier received from the portable device carried by the ATM customer;

determining that the transaction authorization message is valid when the unique transaction program identifiers match; and

determining that the transaction authorization message is invalid when the unique transaction program identifiers are unmatched.

47. A method of operating an automated teller machine (ATM), the method comprising:

a) receiving from a portable device carried by an ATM customer a request to conduct an ATM transaction at the ATM;

b) receiving from the portable device carried by the ATM customer a transaction authorization message which is associated with the requested ATM transaction and which the ATM customer has obtained from an authorization center of a financial institution before making the requested ATM transaction at the ATM and in connection

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with the requested ATM transaction;

c) examining the transaction authorization message which has been received from the portable device carried by the ATM customer to determine if a unique transaction program identifier contained in the transaction authorization message has been modified;

and

d) executing the requested ATM transaction without obtaining any additional transaction authorization message from an authorization center of a financial institution only when a determination is made that the unique transaction program identifier contained in the transaction authorization message has not been modified.

48. A method according to claim 44, in which the determination of whether the transaction authorization message is valid as in paragraph (c) comprises determining whether said message has been modified.

49. A method according to claim 44, further comprising:
receiving from the portable device carried by the ATM customer a unique transaction program identifier which is associated with the requested ATM transaction.

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9. EVIDENCE APPENDIX

· None.

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10. RELATED PROCEEDINGS APPENDIX

None.